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**TO THE  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE  
THE TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION OF 2015**

March 16, 2015  
2:00 p.m.

**TESTIMONY ON S.B. NO. 756, S.D. 1**

**RELATING TO THE SECURE AND FAIR ENFORCEMENT  
FOR MORTGAGE LICENSING ACT**

THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),  
testifying on behalf of the Department of and Consumer Affairs ("Department") on  
Senate Bill No. 756, S.D. 1. The Department offers the following comments.

Senate Bill No. 756, S.D. 1 would exempt from Chapter 454F, HRS, the Secure  
and Fair Enforcement for Mortgage Licensing Act, "[a] seller of real property who offers  
or negotiates terms of a residential mortgage loan secured by the seller's own real  
property and for which the seller is the mortgagee; provided that the seller is an  
individual who provides three or fewer residential mortgage loans in one calendar year

and the interest rate for the loan is not above the State's usury limit. The seller shall provide the buyer a disclosure with the terms of the transaction, including the cost and fees of the transaction."

The S.D. 1 language reflects language agreed upon between the Commissioner and the Hawaii Association of Realtors ("HAR"), with the understanding that additional discussions would occur regarding the nature and content of consumer disclosures. While the Department understands there may be ongoing concerns regarding whether it is best to include consumer disclosures as part of the seller financing exemption requirements, the Department supports the consensus language as reflected in the Senate Draft 1<sup>i</sup> as it reflects a reasonable compromise of the interests of HAR in facilitating seller financing and the Department's interest in preventing financial harm to consumers. The SD1 is narrowly tailored to facilitate financing to the specific category of individuals who may need this method of financing while ensuring that these consumers are appropriately advised of the risks of such transaction.

Thank you for the opportunity to testify. I would be pleased to respond to any questions you may have.

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<sup>i</sup> The Department believes the requirements contained in Senate Bill No. 756, SD1 are currently the most preferable from a consumer protection standpoint amongst the various measures presently dealing with an exemption for seller financing. The other measures addressing an exemption for seller financing include House Bill No. 866, HD1, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act, which does not contain a disclosure requirement, and House Bill No. 1017, HD1, Relating to Secure and Fair Enforcement for Mortgage Licensing Act, which does not contain either a disclosure requirement or a usury interest rate limit requirement.

March 16, 2015

**The Honorable Angus L.K. McKelvey**

House Committee on Consumer Protection & Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: S.B. 756, S.D.1 Relating to the Secure and Fair Enforcement for Mortgage Licensing Act**

**HEARING: Monday, March 16, 2015, at 2:00 p.m.**

Aloha Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports S.B. 756, S.D.1 with amendments**. This measure restores a mortgage license exemption for sellers of real property who offer or negotiate terms of a residential mortgage loan secured by the seller's own real property and for which the seller is the mortgagee; provided that the seller is an individual who provides three or fewer mortgage loans in one calendar year and the interest is not above the State's usury limit. Requires the seller to provide the buyer a disclosure with the terms of the transaction.

The Legislature amended Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) through Act 198, Session Laws of Hawai'i 2014. This law became effective July 1, 2014 and in part, removed exemptions that allowed ordinary, non-licensed property owners to provide owner financing to family members or other purchasers of their own property.

Unfortunately, Act 198 has a significant negative impact upon residential real estate in Hawaii. Owner financing (often referred to as a Purchase Money Mortgage) is a useful tool in the credit market, as it expands the pool of potential buyers for owners and provides buyers an effective financing option in addition to traditional mortgage lending. Owner financing is also an attractive alternative for Sellers who have equity in excess of \$500,000 for couples and \$250,000 for single person as it may enable a Seller to legally spread out the tax consequences over time.

In 2014, there were 169 residential seller financing transactions. Since 2008, there were a total of 966 residential seller financing transactions (see enclosure). These successful transactions have enabled a significant number of Hawaii consumers to enjoy the benefits of home ownership. Owner financing appears to have provided very positive results with little

evidence of harm or risk to consumers. Furthermore, consumers have the traditional and very effective legal option of asserting claims for misrepresentation or fraud should they believe they have been harmed.

In terms of conformance with the SAFE Act, the Consumer Financial Protection Bureau (CFPB) implemented regulations which exclude from the definition of loan originator some sellers who provide seller financing. CFPB has provided some flexibility in the new final rule by excluding from the definition of loan originator two categories of seller financing: those that sell 3 or fewer properties in any 12 month period and those that sell only one in any 12 month period.

S.B. 756, S.D.1, provides that a seller shall provide the buyer a disclosure with the terms of the transaction, including the cost and fees of the transaction. HAR has concerns with the unintended consequences that could arise from its interpretation, such as which fees and costs, which could vary by transaction, must be disclosed and at what point must the disclosure be made. It's important to reaffirm that the majority of these transactions are successful between buyers and sellers.

**As such, HAR prefers the language in H.B. 866, H.D. 1, with additional amendments which states:**

(10) A seller of real property who offers or negotiates terms of a residential mortgage loan secured by the seller's own real property and for which the seller is the mortgagee; provided that the seller provides three or fewer residential mortgage loans in one calendar year and the interest rate for the loan is not above the State's usury limit. **The seller shall provide the buyer a written document with the loan amount, payment schedule and consequences of default.**”

Mahalo for the opportunity to testify.



March 16, 2015

**The Honorable Angus L.K. McKelvey**

House Committee on Consumer Protection & Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

**RE: S.B. 756, S.D.1 Relating to the Secure and Fair Enforcement for Mortgage Licensing Act**

**HEARING: Monday, March 16, 2015, at 2:00 p.m.**

Aloha Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

My name is Kurt Kamikawa and I am an active Real Estate licensee in Hawai'i.

I support S.B. 756, S.D.1 because it restores exemptions that should not have been taken away to begin with. However, I suspect the proposed legislation reflects a misunderstanding of the actual role of Owner Financing in the real estate market.

I have been involved in several successful transactions involving Owner Financing, because they provided unique planning benefits to both Buyer and Seller. The terms of a contract are a very critical part of the negotiation and restrictions on Owner Financing are taking away fundamental rights of the Property Owner who has borne the risk and costs of ownership.

It seems that the limitation of three transactions is very arbitrary and I am not sure what it is trying to address. Does three transactions magically determine the ethics, sophistication or responsibility of the party to the transaction? For example consider this real scenario: A single male with no children suddenly suffers a heart attack and dies while attending to one of his portfolio of properties on Hawai'i island. These properties are considered "off the grid" and the improvements are non-conforming to building code. The brother of decedent wants to sell a dozen or so properties, but the properties do not fit conventional lending criteria so Owner Financing must be offered. Should this Owner be penalized with waiting four or more years to settle the estate, because of a restriction of 3 transactions per year?

I believe the ratio of mortgage fraud committed in Owner Financing transactions to Institutional Financing transactions is overwhelmingly on the side of Institutional Financing. After all, the "mortgage meltdown" was not fueled by unscrupulous Purchase Money Mortgage and Agreement of Sale financing by Sellers of their own properties. Am I missing something, or would similar logic be to restrict Mortgage Brokers to 3 transactions per year as an improved Consumer Protection measure?



The other point I want to make is that the language of the companion bills in Senate and House do not have language to restore exemptions retroactively. My unscientific poll of those in the industry indicate widespread lack of knowledge about this issue. It would be very unfortunate for ANYONE to be harmed by the loss of exemptions, especially because of unknowingly breaking the law. Does this also mean that related professionals such as real estate brokers, real estate attorneys and escrow companies contributed to breaking the law because they should have known the law as part of their professional responsibility?

I respectfully submit this testimony.